

1950

Handbook of Modern Equity by William Q. de Funiak

Roy Mitchell Moreland
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Moreland, Roy Mitchell (1950) "Handbook of Modern Equity by William Q. de Funiak," *Kentucky Law Journal*: Vol. 39 : Iss. 1 , Article 19.

Available at: <https://uknowledge.uky.edu/klj/vol39/iss1/19>

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

BOOK REVIEWS

HANDBOOK OF MODERN EQUITY. By William Q. de Funiak. University of San Francisco Press. 1950. pp. viii, 295. Price \$6.00.

This welcome addition to current legal literature is exactly what its title implies—it is an elementary handbook on *modern* equity. That it is an elementary treatment of the subject should not, however, detract from the fact that it is a scholarly, well-written work of unusual practicability.

The author is well known to teachers of equity. For many years he has been teaching the subject at the University of San Francisco, and his writings in the field have appeared for a number of years in various legal periodicals.

Although the book contains but 295 pages, it covers most of the topics found in the ordinary course in equity. The first two of the twelve chapters are introductory, dealing with such matters as the origin and nature of equity and the ordinary means of equitable relief. The six following chapters deal with various phases of equitable relief against torts. This material has been excellently treated in Chafee and Pound's collection of cases on the topic, a work which has been continued in a somewhat abridged manner in Chafee and Simpson's series of case-books on equity. Professor de Funiak's book is, however, the most adequate text treatment of these topics other than Pound's valuable discussion in 29 Harvard Law Review. The usual equity text follows the historical precedent of giving space and emphasis to equity's protection of property rights with small consideration of equity's protection of personality, as such.

There is a short chapter dealing with possessory relief and the last four chapters discuss the problems arising out of specific performance of contracts. Although reasonably adequate, this portion of the book is not as thorough as that which deals with Equitable Relief Against Torts.

The publication of this new text on the separate subject of equity re-introduces the whole problem of the teaching and study of equity as a separate subject. There is, of course, a difference of opinion on that question among the law schools. The problem was discussed with much vigor and some heat at the December meeting of the Association of American Law Schools in one of the Round Tables. The writer is in accord with the view of those who consider it highly inadvisable to eliminate the teaching of equity as a separate subject. The teaching of equity separately provides an opportunity to point out the causes for the original introduction of equity as a separate system. There are those who consider that enough of these causes continue to exist, or may exist at some future time, to justify at least a quasi separation of the civil court system. Much good law has been made on the equity side. Would progress be as satisfactory and as secure with one court and one civil docket?

If equity is eliminated as a separate course how will this historical material and the fundamental principles of the subject be presented? A student under

such teaching might well understand *how* equity operates without appreciating *why* it does so. After a generation or two of such teaching the advancement which society has made by the use of equity and equity courts during six or seven hundred years might be largely lost.

Those who have had the experience of teaching Damages know how poorly that subject is taught when the problems relating to damages are presented in other courses when and if damage questions arise. Will equity receive as cursory treatment in the years to come?

The footnotes in Professor de Funiak's text are more than adequate and quite usable. A reasonable number of cases support the propositions propounded and helpful text and legal periodical writings have been added. One of the fine things about the book is that the language is fresh and readable. As a whole, this is an original treatment of the subject which should prove helpful to teachers, students and practitioners alike.

ROY MORELAND

University of Kentucky
College of Law

... ..